

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

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April 12, 2010

X =

A =

State =

a =

D1 =

D2 =

D3 =

D4 =

Month =

Year1 =

Year2 =

Dear :

This responds to a letter dated December 15, 2009, and subsequent correspondence, submitted on behalf of X by its authorized representatives, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

The information submitted states that X was incorporated in State on D1. X made an election to be treated as an S corporation effective D1.

On D2, A, who was a resident alien, became a shareholder of X. On D3, A filed a Form I-407, "Abandonment of Lawful Permanent Resident Status," with the United States Department of Homeland Security. Consequently, A became a nonresident alien, which inadvertently terminated X's S corporation election on D3. A did not realize that becoming a nonresident alien would terminate X's S corporation election.

In Month, X learned of the consequences of A becoming a nonresident alien from its external tax advisors. On D4, X redeemed A's shares in X with a payment of a. The shares of X from D1 to D4 were owned by A and the other shareholders of X.

X represents that X did not intend for its S corporation election to terminate. X represents that at no time prior to X's external tax advisors informing X of the consequences of A becoming a nonresident alien did X or any of its shareholders know that A's becoming a nonresident alien would terminate X's S corporation status. X and its shareholders have filed their tax returns for all applicable tax years consistent with X being an S corporation.

A represents that A reported A's share of X's taxable income for Year1. A represents that A will report and pay tax on A's share of X's taxable income for Year2 for the period that A owned stock in X (through D4) when A files A's U.S. individual income tax return for Year2. A also represents that A will report and pay any U.S. federal income tax on any gain recognized in connection with the payment of a in redemption of A's ownership interest received on D4.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and its shareholders consent to make any adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

LAW AND ANALYSIS

Section 1361(a)(1) of the Code provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not have a nonresident alien as a shareholder.

Section 1362(d)(2) provides that (A) in general, an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small

business corporation and (B) any termination under § 1362(d)(2) shall be effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents; and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on D3 and that the termination was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from D3 and thereafter, provided X's S corporation election was valid and provided that the election was not otherwise terminated under § 1361(d). The shareholders of X, including A, must include their pro-rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. In addition, A will report and pay any U.S. federal income tax on any gain recognized in connection with the payment of a in redemption of A's ownership interest received on D4. If X or its shareholders fail to treat themselves as described above, this ruling is null and void.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

Melissa C. Liquerman
Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes